HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.22654 of 2007

26.10.2007

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Between

P.Parappa Naidu ..Petitioner

And

The Inspector of Police, Patthi Konda Circle, Kurnool District and another ..Respondents

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:: JUDGMENT ::

HON'BLE SHRI JUSTICE NOOTY RAMAMOHANA RAO

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W.P. No.22654 of 2007

This writ petition has been instituted seeking a writ of mandamus to declare the report dated 3.10.2007 submitted by the Inspector of Police, Pattikonda Circle, Kurnool District in Crime No.17 of 2001 of Devarakonda Police Station in Sessions Case No.103 of 2003 on the file of the II Additional District and Sessions Judge, Adoni, Kurnool District, as illegal.

On a previous occasion, in Criminal Petition No.4512 of 2007, this Court was called upon to direct the II Additional District and Sessions Judge of Kurnool District at Adoni to order further investigation under Section 173 (8), Criminal Procedure Code into Crime No.17 of 2001 of Devarkonda Police Station and adjourn the Sessions Case No.103 of 2003 till a receipt of report from the Police. The learned Single Judge of this Court upon a careful analysis of the legal and factual aspects concerning the matter, has held that the Court of Sessions, even after the committal, can exercise powers to order further investigation into any matter for ultimately rendering justice between the parties. Therefore, the Sessions Court has been specifically directed by this Court to ascertain whether "Settibalija Sanjeeva, S/o Kondanna" is dead or not. It has also been further clarified that if the said "Settibalija Sanjeeva, S/o Kondanna" is still alive, as claimed by

the accused, framing of the charge that he was killed by the accused, itself would become illegal and incorrect. It is obvious that the accused could not have been charged for having killed "Settibalija Sanjeeva, S/o Kondanna" when he was happily alive and moving around as a free man. In these set of circumstances, while allowing the Criminal Petition, this Court directed the Police to conduct investigation specifically as to whether "Settibalija Sanjeeva, S/o Kondanna" is alive or not and to submit a report under Section 173 (8) of the Cr.P.C. to the learned II Additional Sessions Judge, Kurnool District at Adoni. It is in pursuance thereof, the Police have filed their report on 3.10.2007. The investigation carried out by the Police reveals that there are four persons living in Basinepalli Village of Gooty Mandal of Anantapur District bearing the name of Sanjeeva. In the voters list for that Village at Serial No.203 at Door No.1/121, the name of Sanjeeva S/o Kondanna, aged 44 years was recorded. At serial No.205, at Door No.1/122, Sanjeeva, S/o Hanumantha Raghu, aged 20 years was recorded. At serial No.446, at Door No.1/245, the name of B.C.Sanjeeva Kumar, S/o Kondaiah, aged 20 years was recorded. At serial No.592, at Door No.1/100, the name of Banala Sanjeeva S/o B.Kondanna, aged 36 years, was recorded. The Investigating Officer has found that "Settibalija Sanjeeva, S/o Kondanna" who is said to be aged 35 years is the one who has been killed by the accused on 30.3.2001. Therefore, his name was deleted from the charge-sheet.

However, the learned counsel for the petitioner Sri P.Veera Reddy strenuously contends that this report submitted by the Police even after the directions issued by this Court in

Criminal Petition No.4512 of 2007 is faulty and the Police have not properly conducted the investigation to find out whether "Settibalija Sanjeeva, S/o Kondanna" who is accused No.9 in Crime No.16 of 2001 on the file of Devarkonda Police Station is alive or not.

I am afraid that this Court in a proceeding under Article 226 of the Constitution of India cannot enter upon this treacherous terrain. This is a matter which can only be appreciated, if necessary, by securing the evidence by way of examining the necessary parties. By the very principle laid down in Criminal Petition No.4512 of 2007, the Sessions Court has been declared to have been vested with the necessary power for securing proper investigation to be carried out in the matter. Therefore, the proper course for the petitioner would have been to move the Sessions Court concerned and demonstrate before it as to how and why the report submitted by the local Police on 3.10.2007 cannot be construed as a faithful compliance with the directions issued by this Court in Criminal Petition No.4512 of 2007. If in the process, the Sessions Court is satisfied that there is adequate material to doubt the veracity of the report of the investigation filed by the Police, it has got undoubted powers to order for and secure appropriate investigation in to the matter. Therefore, this writ petition is dismissed allowing the parties to take recourse to the appropriate remedy.

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NOOTY RAMAMOHANA RAO.J.

26.10.2007

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